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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/070,191	06/03/2002	Romuald Pawluczyk	32528	2915

7590 11/17/2004

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EXAMINER

WINAKUR, ERIC FRANK

ART UNIT	PAPER NUMBER
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3736

DATE MAILED: 11/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/070,191	Applicant(s) PAWLUCZYK ET AL.	
	Examiner Eric F Winakur	Art Unit 3736	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 August 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 and 10-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 10,11 and 15-24 is/are allowed.
- 6) ☒ Claim(s) 1-8 and 12-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 103

2. The rejection of claims 1 - 8 and 12 - 14 under 35 U.S.C. 103(a) as being unpatentable over Lichter et al. in view of Robinson is hereby maintained for the reasons provided in the previous Office Action, paragraph 2.

Response to Arguments

3. Applicant's arguments filed 9 August 2004 have been fully considered but they are not persuasive. Applicant contends that neither Lichter et al. nor Robinson teach or suggest a non-invasive glucose measuring device that is connectable to an external stabilized power source. However, Lichter et al. provide such a teaching. It is noted that the background of Lichter et al. describes prior art devices that include power adapters (column 1, lines 30 - 37) while the disclosed invention, in contrast, receives power from the personal computer (column 4, lines 53 - 55, as previously disclosed). In addition, Lichter et al. give particular examples of embodiments of the invention where power from an external power source is supplied through a power interface (see the descriptions of Figure 3 starting at column 9, line 36; Figure 5 (optical oximeter) starting at column 10, line 20; and Figure 8 (includes optical oximeter) at column 11, line 12). Although the discussion of the non-invasive glucose sensor embodiment (Figure 19) is brief, and merely suggests that an optical measurement device (which requires power) can be used without giving as complete a description as for the embodiments of Figures

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3, 5, or 8, one must take the teaching of Lichter et al. as a whole. The arrangement of Lichter et al. discloses details to supply power to an optical oximeter embodiment, and further teaches that an optical non-invasive glucose sensor is an additional embodiment. Taken together, these teachings are sufficient to guide one of ordinary skill in the art to supply power from an external power source to the non-invasive glucose sensor. Robinson is relied upon to disclose details of the optical glucose sensor, and as Lichter et al. provide details regarding the power supply, such a disclosure is not required in Robinson. Thus, contrary to Applicant's assertions, Lichter et al. teaches a measuring device that is connectable to an external stabilized power source and the combination suggests the claimed invention. As Applicant presents no other arguments regarding the combination, the rejection is hereby maintained.

Allowable Subject Matter

4. Claims 10, 11, and 15 - 24 are allowed.

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of


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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric F Winakur whose telephone number is 571/272-4736. The examiner can normally be reached on M-Th, 7:30-5; alternate Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on 703/308-3130. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Eric F Winakur
Primary Examiner
Art Unit 3736

12 November 2004